

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

JAMES JASON WHITE, #1909270	§	
VS.	§	CIVIL ACTION NO. 6:15cv847
DIRECTOR, TDCJ-CID	§	

ORDER ADOPTING REPORT AND RECOMMENDATION

Petitioner James Jason White, an inmate confined in the Texas prison system, proceeding *pro se*, filed the above-styled and numbered petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petition was referred to United States Magistrate Judge K. Nicole Mitchell, who issued a Report and Recommendation concluding that the Director’s motion to dismiss the petition as time-barred (docket entry #9) should be denied.

The Director has filed objections. He argues that the time during which Petitioner’s first state application for a writ of habeas corpus was pending should not toll the deadline. In support of the argument, he cites two pre-AEDPA decisions. *Williams v. United States*, 553 F.2d 420, 422 (5th Cir. 1977) (“where [an] appeal is dismissed on a party’s own motion, he is treated as if he had never filed the appeal”); *Ford v. Sharp*, 758 F.2d 1018, 1023-24 (5th Cir. 1985) (same). Neither case, however, concerns the statute of limitations as provided by AEDPA. Magistrate Judge Mitchell’s Report and Recommendation reveals that the Director’s argument has been rejected by the Eastern, Northern and Southern Districts, albeit in unpublished opinions. The Court finds that the Director’s argument lacks merit for reasons explained in the Report and Recommendation.

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by the Director to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and the objections by

the Director are without merit. Therefore the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that the Report and Recommendation (docket entry #17) is **ADOPTED**. It is further

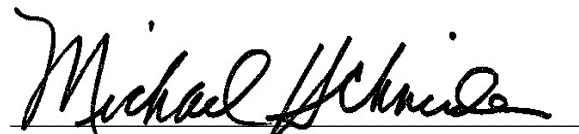
ORDERED that the Director's motion to dismiss the petition as time-barred (docket entry #9) is **DENIED**. It is further

ORDERED that an answer on the merits is due no later than thirty days from the entry of this order. It is finally

ORDERED that the deadline for Petitioner to reply to the answer is fourteen days from the filing of the answer.

It is SO ORDERED.

SIGNED this 26th day of January, 2016.

A handwritten signature in black ink, reading "Michael H. Schneider", is written over a horizontal line.

MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE